



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1994

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR94-242

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 24727.

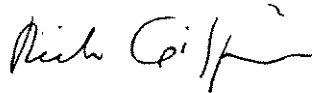
The Texas Department of Public Safety (the "department") has received several requests for information relating to a certain trooper. One of the requests, representative of the others, seeks "all information regarding a DPS internal affairs investigation into the shooting incident involving DPS Trooper Bryan Barnhart and Lorenzo Colston. [Including] a copy of the DPS general manual dealing with the use of deadly force and any other written materials, video tapes, or other teaching tools used to explain why and when troopers may discharge their weapons." You advise us that the department has made some of the requested information available to the requestors. You seek to withhold the remaining information, which you have submitted for our review, from required public disclosure under sections 552.103, 552.108, 552.111, and 552.119 of the act.

To secure the protection of section 552.103, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. The submitted records may therefore be withheld. As we resolve this matter under section 552.103, we need not address the applicability of the other claimed exceptions at this time.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Open Government Section

RG/GCK/rho

Ref.: ID# 24727
ID# 24900
ID# 24915
ID# 24938
ID# 24940
ID# 24966
ID# 24967
ID# 24981
ID# 24998
ID# 25003
ID# 25053
ID# 25144
ID# 25391

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